



P.O. Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

**Harbour East-Marine Drive Community Council
October 3, 2013**

TO: Chair and Members of Harbour East-Marine Drive Community Council

Original signed

SUBMITTED BY:

Brad Anguish, Director of Community and Recreation Services

DATE: September 17, 2013

SUBJECT: **Case 17863: Development Agreement – corner of Ochterloney Street and Victoria Road, Dartmouth**

INFORMATION REPORT

ORIGIN

- Staff report to Heritage Advisory Committee dated August 16, 2013.
- Submission from Heritage Trust of Nova Scotia to Heritage Advisory Committee dated August 27, 2013.

BACKGROUND

On August 28, 2013 the Heritage Advisory Committee reviewed the proposed 7 storey, mixed use development at the corner of Ochterloney Street and Victoria Road in Downtown Dartmouth (*refer to Staff Report for Case 17863*). A submission from Heritage Trust of Nova Scotia regarding this proposal was also discussed. Attachment A provides the Heritage Trust submission, the main points being as follows:

- that Policy CH-1 of the Regional MPS regarding development agreement applications for registered heritage properties should apply, rather than Policy CH-2 which applies for proposals adjacent to a heritage property;
- that Policy H-10 of the Downtown Dartmouth MPS should apply, regarding additional development rights for registered heritage properties; and
- that more detailed discussion of Policy D-1 of the Downtown Dartmouth MPS should be provided.

DISCUSSION

Applicability of Policy CH-1 vs. CH-2

The Regional MPS includes two policies regarding development agreement applications in relation to registered heritage properties.

- Policy CH-1 applies where additions or alterations are proposed either to a heritage building or on a heritage property; and
- Policy CH-2 applies where development is proposed adjacent to a heritage property.

It is the opinion of staff, the applicable policy for the proposed development is CH-2 given the proposed development will be adjacent to the heritage property and does not include any additions or alterations to a heritage building or registered heritage property. The proposed development scenario includes the subdivision of 99 Ochterloney Street (a registered heritage property) by way of a non-substantial alteration to the heritage property, resulting in a parcel being subdivided from the rear of the property, and added to the three vacant adjacent parcels that comprise the development site. Following the subdivision, the proposed development becomes adjacent to the heritage property and does not include a heritage property or heritage building therefore CH-2 applies as the applicable policy. The subdivision of 99 Ochterloney Street can occur with or without the proposed development scenario and does not require the approval of the Heritage Advisory Committee or Regional Council. However, if CH-1 was considered by staff as the applicable policy to evaluate the proposed development, the staff recommendation would remain the same as described in the Staff Report dated August 16th, 2013.

For clarification, the proposed development agreement includes the registered heritage property for two reasons only:

- to require that the subdivision and consolidation with the three vacant lots take place prior to the issuance of any permits for the new building, in order to provide control over what is built behind the heritage building; and
- to allow inclusion of a clause, enabled by the *Heritage Property Act*, whereby the developer waives his right to demolish the heritage building. This provides improved, long term protection to the building.

Applicability of Policy H-10

This policy of the Downtown Dartmouth MPS applies where internal conversions of a heritage building to uses not permitted in a zone are contemplated. In this case, the internal conversion of 99 Ochterloney Street is already enabled by the DB (Downtown Business) Zone and no additions to the building are proposed. Therefore, in the opinion of staff this policy is not applicable in relation to this case.

Policy D-1

In the staff report, Attachment B contains an evaluation of the proposal against applicable policies of the Downtown Dartmouth MPS, including Policy D-1. Most of the criteria under this policy are addressed under Policy CH-2 of the Regional MPS. The Heritage Trust submission specifically references building height and materials, and individual design elements. As noted in the staff report, the detailed design satisfies these concerns. Window proportions are another matter identified in the Heritage Trust submission. Staff feel that the windows as proposed, both at grade and on upper floors, are of acceptable proportion and style for the proposed building.

Conclusion

In response to the submission of The Heritage Trust, the proposal as presented in the original staff report satisfies the applicable review criteria established under both regional and local MPS policy.

FINANCIAL IMPLICATIONS

There are no budget implications. The Developer will be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this Agreement. The administration of the Agreement can be carried out within the approved budget with existing resources.

COMMUNITY ENGAGEMENT

The community engagement process is consistent with the intent of the HRM Community Engagement Strategy.

The level of community engagement was consultation, achieved through a Public Information Meeting held on August 30, 2012 (see Attachment E of the staff report for minutes). Notices of the Public Information Meeting were posted on the HRM website, placed in the newspaper, and mailed to property owners within the notification area as shown on Map 2 of the staff report.

A public hearing has to be held by Community Council before they can consider approval of a development agreement. Should Community Council decide to proceed with a public hearing on this application, in addition to the published newspaper advertisements, property owners within the notification area shown on Map 2 will be notified of the hearing by regular mail.

The proposed development agreement will potentially impact local residents, businesses, and property owners.

ENVIRONMENTAL IMPLICATIONS

The proposal meets all relevant environmental policies contained in the MPS documents. Please refer to Attachments B, C, and D of the report dated August 16, 2013 for further information.

ATTACHMENTS

Attachment A Letter from Heritage Trust of Nova Scotia dated August 27, 2013

Staff Report: <http://www.halifax.ca/boardscom/hac/documents/hacaugmtg.PDF>

A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/cc.html> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Mitch Dickey, Planner, 490-5719

Original signed

Report Approved by:


Kelly Denty, Manager, Development Approvals, 490-4800



Attachment A

Heritage Trust of Nova Scotia

1588 Barrington Street
PO Box 36111, RPO Spring Garden, Halifax, B3J 3S9

August 27, 2013

Mr. Stephen Terauds, Chair and
Members of the Heritage Advisory Committee
Halifax Regional Municipality

Re Case 17863: Development Agreement, Elliot House Lot and Adjacent Lots

Dear Committee Members:

The Heritage Trust asks the Heritage Advisory Committee to defer this matter in order that staff can assess the proposed development agreement according to Municipal Planning Strategy (MPS) policies that were omitted in the staff report of August 16.

The entire lot at 99 Ochterloney Street is a registered heritage property. (See the attached extract from the Heritage Property Act.)



The staff report treated the proposed development as if it were **abutting** a registered heritage property, and considered the clauses of Regional MPS Policy CH-2, which applies to “lands abutting federally, provincially or municipally registered heritage structures”.

In fact, the proposed development agreement would apply to the **entire site, including the registered heritage property**, 99 Ochterloney Street, and the abutting property and two other properties. (See the first page of Attachment A in the staff report.) Because of this, Regional MPS Policy CH-1 (appended to this letter) also applies. The proposal is clearly “a development agreement application

in connection with any municipally registered heritage property”, in the words of Policy CH-1. A supplementary staff report should assess the proposal with respect to Policy CH-1. In particular, the report should discuss whether the proposed new construction would be “physically and visually compatible with” and “subordinate to” the heritage property.

In addition, the proposed development agreement should also be discussed in terms of Policy H-10 of the Downtown Dartmouth Secondary Planning Strategy (DDSPS), which allows for “an increase in development rights for registered heritage properties”. Policy D-1 of the DDSPS should be discussed clause by clause. The new report should discuss whether the design is “complementary” to the Elliot House in terms of “building height and materials” and “the proportion of building design elements”, such as windows (Policy D-1(d), staff report, page 27). Policies and images are attached.

Please defer this matter until a new staff report addresses these policies.

Yours sincerely,

Phil Pacey, Chair,
HRM Committee
902 237 1375

Extracts from the Heritage Property Act:

3(c) "building" includes the land and structures appurtenant thereto;

3(g) "municipal heritage property" means a building, public-building interior, streetscape, cultural landscape or area registered in a municipal registry of heritage property;

Extract from the Halifax Regional Municipality Charter:

232 (1) The Municipality may not act in a manner that is inconsistent with a municipal planning strategy.

Extract from the Regional Municipal Development Plan (emphasis added):

CH-1 When considering a **development agreement application in connection with any municipally registered heritage property, a lot on which a municipally registered heritage building is situated**, or a building, part of a building or building site within a heritage conservation district, HRM shall, in addition to the criteria established under the appropriate policies guiding the development agreement under the applicable secondary planning strategy, also give consideration to the following:

- (a) **that any municipally registered heritage property covered by the agreement is not altered to diminish its heritage value;**
- (b) that the development maintains the integrity of any municipally registered heritage property, streetscape or heritage conservation district of which it is part;
- (c) that significant architectural or landscaping features are not removed or significantly altered;
- (d) that the development observes, promotes and complements the street-level human-scaled building elements established by adjacent structures and streetscapes;
- (e) that the proposal meets the heritage considerations of the appropriate Secondary Planning Strategy as well as any applicable urban design guidelines;
- (f) **that redevelopment of a municipally registered heritage property, or any additions thereto shall respect and be subordinate to any municipally registered heritage property on the site by:**
 - (i) conserving the heritage value and character-defining elements such that **any new work is physically and visually compatible with, subordinate to and distinguishable from the heritage property;**
 - (ii) maintaining the essential form and integrity of the heritage property such that they would not be impaired if the new work was to be removed in the future;
 - (iii) placing a new addition on a non-character-defining portion of the structure **and limiting its size and scale in relationship to the heritage property;** and
 - (iv) where a rooftop addition is proposed, setting it back from the wall plane such that it is as inconspicuous as possible when viewed from the public realm; and
- (g) any other matter relating to the impact of the development upon surrounding uses or upon the general community, as contained in Policy IM-15.



Architect's Bird's Eye View of the proposed development. A supplementary staff report should discuss whether the proposed redevelopment would be "subordinate to" the heritage property, in the words of Policy CH-1(f)(i).

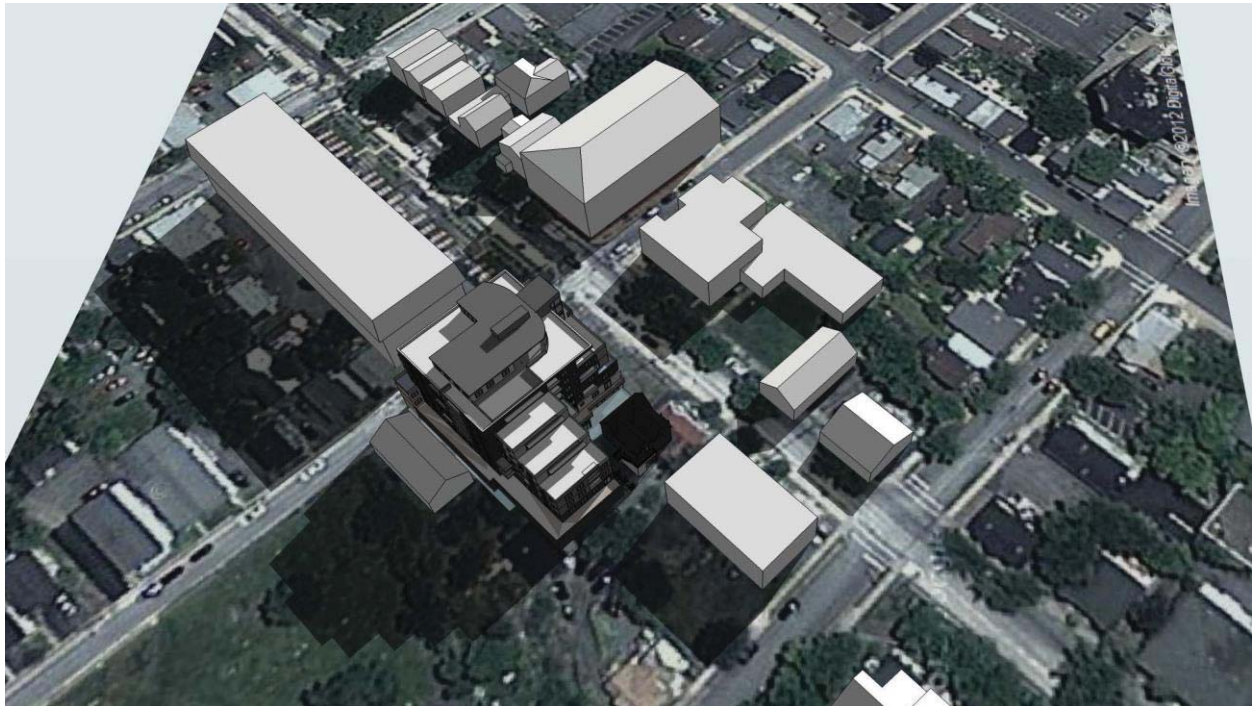
Extract from Downtown Dartmouth Secondary Planning Strategy (emphasis added):

Policy H-10

*Council should encourage the reuse, restoration and retention of registered heritage properties within the downtown. One means through which this will be encouraged is by **allowing for an increase in development rights for registered heritage properties**, where it can be demonstrated that the current use is an impediment to its reuse. Internal conversions of registered heritage properties to accommodate uses not otherwise permitted may be considered through the development agreement process. In considering any requests, the following criteria shall be addressed:*

- a) the present use is an impediment to the building's retention;*
- b) that the building is suitability for conversion, in terms of building size, the size of proposed individual residential units, and/or the nature of the proposed use;*
- c) that adequate measures are proposed to ensure the continued protection of the building as a registered heritage property, and that renovations and additions to the building are consistent with the intent of HRM's Heritage Building Conservation Standards as updated from time to time;*

- d) that no additions of greater than ten percent (10%) of the footprint area of the building are proposed; and that all additions including wheelchair ramps, fire escapes and emergency exits are designed to be as compatible as possible with the exterior of the building;*
- e) that adequate measures are proposed to minimize impacts on abutting properties and the streetscape as a whole as a result of traffic generation, noise, hours of operation, parking requirements and such other land use impacts as may be generated as part of a development;*
- f) that the placement and design of parking areas, lighting and signs, and landscaping is in keeping with the heritage character of the building;*
- g) where applicable, the proposal should include an assessment and strategy to protect significant on-site archeological resources which may be impacted by the proposed development.*



Architect's drawing showing shadows from the proposed development falling on the adjacent cemetery at 9 a.m. on March 20. A supplementary staff report should discuss whether the development minimizes "shadowing on public open spaces", in the words of Policy CH-2(c).